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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1067 OF 2005
IN
SUMMARY SUIT NO.208 OF 2002
IN
EXECUTION APPLICATION NO.146 OF 2004

Khimji Teja Jitiya).. Plaintiff

Versus

Mavji Teja Jitiya and another).. Defendants

Mr.B.N. Shah i/b.Mr.B.M. Vyas for the Plaintiff.

Mr.Piyush Shah for Mr.V.N.Tayade for Defendant No.1.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 27TH JUNE 2006

P.C.:

. The present Motion has been taken out for setting aside the ex-parte decree dated 18th July 2002. The Defendants have contended that there were no business relations between the Plaintiff, who is the brother of Defendant No.1, and the Defendants. According to the Defendants, the Bill of Exchange on which the Suit is based is forged and does not bear the signature of Defendant No.1. The writ of summons also does not bear his signature. According to the Defendants, therefore, the Defendants have not been served with the writ of summons. The Defendants contend that they have deposited Rs.75,000/- in Court when the

execution application was stayed pursuant to the directions of this Court. The Defendants point out that the Metropolitan Magistrate, 29th Court, Dadar, Mumbai has directed the police to carry out an investigation under Section 202 of the Criminal Procedure Code in respect of the allegedly forged document. According to the Defendants, the investigation is still in progress.

2. The learned Advocate for the Plaintiff submits that the Bailiff's report indicates that both the Defendants were served on 20th February 2002. In such circumstances, submits the learned Advocate, the decree should not be set aside. Moreover, according to him, the decreetal amount is far more than Rs.75,000/- which has been deposited by the Defendants pursuant to the order passed in the Chamber Summons and the warrant of attachment was stayed.

3. In my view, the Defendants have pointed out special circumstances for setting aside the decree under Order 37 Rule 4 of the Civil Procedure Code. In view of the averments contained in the affidavit in support of the Motion and further affidavit dated 7th April 2006, Notice of Motion made absolute in terms of prayer clause (a).